Commercial & Savings Bank of Somalia v Joo Seng Company

HIGH COURT (SINGAPORE) – SUIT NO 1569 OF 1979
LAI KEW CHAI J
12 AUGUST 1988

Sale of Goods – Nemo dat rule – Conflict between pledgees of goods and purchaser in good faith – Exceptions to nemo dat rule – UK Sale of Goods Act 1979, ss 21(1), (2) & 22 – UK Factors Act 1889, s 2(1)

The plaintiffs, a bank in Somalia, were pledgees of a cargo of rice on board the mv Lynna. When the Lynna arrived in Singapore, without the permission of the plaintiffs or the buyers of the rice, the rice was brought into Singapore. Part of the rice was bought by the defendants at a price per bag equal to about half that paid by the original buyers. The plaintiffs sued the defendants for conversion and detinue in respect of the rice that the latter had brought. The latter claimed that they bought and acquired good title to the rice without any notice of the plaintiffs' title. In consideration of the defendants releasing the goods to the plaintiffs, the latter had caused to furnish a bank guarantee in favour of the defendants. The plaintiffs also sought the discharge of the guarantee.

Held, allowing the plaintiffs' claim:

(1) The general rule under s 21(1) of the UK Sale of Goods Act 1979 was that where goods are sold by a person who is not their owner, and who does not sell them with the consent of the owner or his authority, the buyer acquires no better title to the goods than the seller had.

(2) The three relevant exceptions to the general rule were sales in the market overt, sales by mercantile agents (as provided under s 21(2) of the UK Sale of Goods Act, and s 2(1) of the UK Factors Act) and where the owner was estopped from denying the owner's authority to sell.

(3) The defendants were getting the rice on the cheap and the circumstances of purchase were highly suspicious. The plaintiffs had therefore shown that the defendants were not acting in good faith and without notice that the sale to them was made without authority.

(4) The sellers of the rice, who were charterers of the mv Lynna, were carriers and were not mercantile agents when they sold the rice.

(5) The third exception did not apply because there was no evidence that the owners of the rice had done anything that would raise an estoppel under the UK Sale of Goods Act.

(6) As the defendants had not fallen within any exception to the rule that the buyer acquires no better title than the seller had, the plaintiffs were pledgees or holders of value of the bills of lading and were therefore entitled to the rice.

(7) The plaintiffs were therefore entitled to the damages claimed which were not disputed, and interest at 12% pa and costs. The guarantee in favour of the defendants would also be discharged.

[*Editorial Note*: The defendants have appealed to the Court of Appeal vide Civil Appeal No 93 of 1988.]

Legislation referred to
Factors Act 1889 [UK] s 2(1)
Sale of Goods Act 1979 [UK] ss 21(1), (2), 22

Loh Boon Huat for the plaintiffs.
Yeong Pui Cheng (Miss) for the defendants.

Cur Adv Vult

Lai Kew Chai J: The plaintiffs, a bank in Somalia, as pledgees of 62,000 bags or 6,200 metric tons of parboiled rice under three bills of lading ex mv 'Lynna', are claiming damages for conversion and detinue against the defendants, a firm of importers and exporters, who in turn assert that they had bought and had acquired a good title over 14,570 bags or 1,457 tons of parboiled rice without any notice of the plaintiffs' claims thereto. In consideration of the defendants delivering the rice in question to the plaintiffs, the plaintiffs had caused a bank to furnish a bank guarantee dated 29 August 1979 for $466,240 in favour of the defendants. If the plaintiffs succeed, they ask that the guarantee and all subsequent renewals thereof be discharged.

The matter arose in this way. Three Somali traders and customers of the plaintiffs bought in the aggregate 6,200 metric tons of parboiled rice from Siam Rice Trading Co Ltd of Bangkok, Thailand at prices ranging from equivalent $64.36 per bag to $66.83 per bag. At the requests of the three Somali traders, the plaintiffs caused their agents, The Bank of Credit & Commerce, to open the letters of credit for negotiation through the Bangkok Bank Ltd, in Thailand. The rice was shipped on board mv 'Lynna' in bags bearing the marks of the buyers and they showed they were for discharge in Berbera, Somalia. Two of the relevant bills of lading were dated 31 January 1979 and the third was dated 7 February 1979. The sellers of the rice duly negotiated the bills of lading and tendered other documents under the letters of credit and were duly paid. The vessel, chartered to Defotanghe Shipping Co Ltd (hereinafter referred to as 'the charterers'), arrived or remained in Singapore as late as 30 March 1979. Without the consent of the plaintiffs or the buyers of the rice, the rice was discharged into lighters in Singapore by the agents of the charterers, Excel Maritime Pte Ltd, who engaged on their behalf a stevedoring company known as Lim Ho Sai Trading & Transportation Co to discharge the rice and sell them. It was found that the goods were discharged and sold on the instructions of the charterers and that 1,457 metric tons were sold to the defendants at $33 per bag plus brokerage and handling charges which brought the costs of the rice to $40 per bag, which was about half the price per bag paid for by the Somalian buyers. Another substantial portion of the consignment of rice was sold to another party in Singapore and the plaintiffs had commenced other legal proceedings in Singapore to restrain the charterers and the Singapore 'buyers' of the rice from dealing further with the rice. In the result, the plaintiffs had to provide bank guarantees, including one in favour of the defendants, before they were able to take delivery of what remained of the 1,457 metric tons of rice which after

storage were re-shipped from Singapore to Mogadshio, Somalia at the expense of the plaintiffs.

Abdillahi Bauladeh Idleh, the assistant manager of the plaintiffs, said in evidence that three customers of the plaintiffs, Mohamed Hassan Ali, Hassan Ibrahim Ismail and Ali Ahmed Haji Abdullahi Hasheesh applied for the three letters of credit put in evidence favouring the Thai sellers. They were opened by a bank known as Somali Savings & Credit Bank whose assets and liabilities were taken over by the plaintiffs. This was not disputed by the defendants. As the plaintiffs' predecessor did not have a correspondent bank in Bangkok, they requested the Bank of Credit & Commerce International SA ('BCCI') to open the three letters of credit. BCCI duly opened the letters of credit in favour of the Thai sellers through the Bangkok Bank Ltd who after negotiations sent the bills of lading, as documents of title, and other conforming documents to the plaintiffs' predecessor via BCCI after they had been duly reimbursed. Although the documents tendered under the three letters of credit were in order and conformed with the requirements of the letters of credit, the three Somalian customers of the plaintiffs declined to take up the documents as the goods did not arrive in Berbera, Somalia as expected in March 1979. The lawyer the plaintiffs employed and sent from Djibouti found out about the sale of 1,457 metric tons to the defendants. He also recovered the rest of the consignment. On the plaintiffs' behalf, 6,050 metric tons of rice were re-shipped to Mogadshio in November 1979 by mv 'Kota Melati'. A lot of demurrage was incurred. He saw that the bags of rice bore the marks 'Berbera' and the marks of the consignees, as was to be expected. The plaintiffs were not claiming any transhipment freight or transhipment expenses but they claimed storage, handling and fumigation charges for the rice. The surveyors of the plaintiffs instructed an independent firm of surveyors to carry out the survey of cargo damage. Yusof Jama Ali Duhul, the lawyer, admitted in cross-examination that a Somalian state body, which controlled ships calling at Somalian ports, had asked the charterers about the costs of diverting the ship from Berbera to Mogadshio. The charterers did give some figures but nobody agreed to them and, in the absence of agreement, binding on cargo interests, he implied that the charterers should have proceeded to Berbera and there deliver the rice as required under the bills of lading. Yusof also said that the police in Singapore assisted him, that he found the 'sales' to another firm and to the defendants and that on discovering the deception of the charterers, the solicitors acting for them had discharged themselves.

A cargo surveyor, Yong Koi Kwang, called by the plaintiffs said that mv 'Lynna' arrived in Singapore on 30 March 1979. It discharged 62,000 bags of rice less 116 bags in dispute. He saw the discharge tally sheets kept by the charterers' agents in Singapore. He found out that the 14,570 bags of rice ex lighters were stored in the Port of Authority's godown TA6 under the defendants' name. He visited the defendants' shop and met one Lim You Chong. Lim told him that the rice was bought through Lim Ho Sai or Lim Ho Sai Transport & Trading Co. He had paid the company by a local letter of credit opened by the Bank of America. Lim also told him that the defendants, who dealt with liquor, fishery products and canned goods, never dealt with rice previously, certainly not in a quantity as large as 1,457 metric tons. Lim also knew that the rice was from 'Lynna' and that the rice was for African countries. Yong Koi Kwang also said that the defendants were not licensed dealers nor licensed exporters of rice. Nor were Lim Ho Sai Transport & Trading Co. He testified that there was a fairly limited market in Singapore for Thai parboiled rice and that between 1978 and 1979 not a single ton of parboiled rice was exported from Singapore to Hong Kong. He said the market was limited because parboiled rice, ie rice with husks which had been steamed, was usually eaten by Africans and Arabs. He said the market price, however, of parboiled rice in 1979 was $68.50 per bag and that the export price was $97.90 cif per bag.

Lim You Chong, a partner of the defendants, gave evidence. He said that he received an inquiry from a party in Kuwait for a supply of rice (which was not specified) and frozen chicken. He became interested and put out word that he was interested in purchasing rice. Eventually one Peh Kim Swee, a broker, contacted him and showed him a packet sample of parboiled rice. Lim had no particular buyer in mind at that time: yet he was interested. But, he suggested that there was demand and he decided to stockpile rice to do more business. He said after considerable negotiation, the deal was struck at $33 for the rice, $4 commission and $3.20 for transportation per bag.

Although he was paying $3.20 per bag for transportation, he claimed that he did not know where the rice was. He said he was supposed to pay $50,000 as deposit. With regard to the contract of purchase he said an unknown representative sent by Lim Ho Sai Transport & Trading Co brought the agreement (exh D4) which he signed. He later paid the $50,000 to the sellers and opened a letter of credit for the balance with American Express International Banking Corporation, which when referred to in Chinese might have given the impression that it was the Bank of America. He said he had not fully reimbursed the bank. He said that he had bought on a transhipment basis and that since he was not importing the rice into Singapore he was not doing anything unlawful and that he required no licence. In cross-examination, he admitted that he had never dealt in rice previously, that the transaction was one-sixth of his year's turnover and that he did not know that the rice was then in lighters. He claimed that he relied on the broker and therefore he did not ask about the identity of the sellers and the whereabouts of the goods. On being referred to

the statement in D4 'on behalf of Defotanghe Shipping Co Ltd', he said he was not aware what it was all about. He said that as far as he was concerned, he was buying from Lim Ho Sai Trading & Transport Co. He even denied any knowledge that he was buying the rice at about 60% of the market price. He claimed that he was told by a business friend in Hong Kong that the market price was $500 to $600 per metric ton.

Section 21 (1) of the Sale of Goods Act 1979 provides that, subject to the Act, where goods are sold by a person who is not their owner and who does not sell them under the authority or with consent of the owner, the buyer acquires no better title to the goods than the seller had. The exceptions relevant for present purposes are (a) in the case of a sale in market overt as provided under s 22 of the Act; (b) sale by a mercantile agent as provided under s 21(2) of the Act and s 2(1) of the Factors Act 1889; and (c) the doctrine of estoppel which arises if '... the owner of the goods is by his conduct precluded from denying the seller's authority to sell': see s 21(1) of the Act.

In my judgment, the plaintiffs have successfully shown that the defendants were not acting in good faith and without notice that the sale to them was made without the owner's authority. They were buying at about half the market price and I find the evidence of Lim You Chong about his knowledge of the market price very unsatisfactory. He was obviously not keeping to the truth. I am sure he knew he was getting the rice on the cheap, that the circumstances were highly suspicious and I think he took a calculated risk, hoping to make an unusual amount of profit within a very short time. I am satisfied that the defendants did not buy from the market overt. It is also quite plain that the charterers were carriers and were not 'mercantile agents'. The third exception also does not arise as there was no evidence that the owners of the rice had done anything or failed to do anything that would raise an estoppel under s 21(1) of the Act.

On the evidence, I am satisfied that the plaintiffs were the pledgees or holders for value of the bills of lading and that they were entitled to possession of the goods; that they had not been reimbursed by the original Somalian buyers; and that the defendants had wrongfully withheld possession of the rice from them.

The damages claimed were proved and were not disputed. The defendants are ordered to pay the plaintiffs the sum of $79,639.85 and interest thereon at 12% pa calculated from 1 August 1979 and the costs of these proceedings. The said guarantee and all renewals thereof in favour of the defendants are also discharged.

Order accordingly.

Solicitors: *Godwin & Co*; *Lim Kiap Khee & Co.*

Reported by *Terence Tan Bian Chye*

MALAYSIAN REPORTS

Alfred Templeton & Ors v Low Yat Holdings Sdn Bhd & Anor

HIGH COURT (PENANG) – CIVIL SUIT NO 375 OF 1981
EDGAR JOSEPH JR J
12 JANUARY 1989

Tort – Trespass – Nuisance – Implied easement – Construction of deeds where terms not clear – Proprietary estoppel – Words or conduct may raise an equity – Role of equity under the National Land Code 1965

Statutory Interpretation – Scope of s 6 of the Civil Law Act 1956 – Availability of other remedies where specific performance not available due to hardship – Measure of damages for trespass, nuisance and injury to land – Implied terms

Damages – Principles governing award and assessment of general, special and exemplary damages – Definition and scope of laches, acquiescence, abandonment, waiver and limitation – Benefit and burden of a contract

Civil Procedure – Limitation – Whether Limitation Act can give way to estoppel

The material facts of this case are that by a sale and purchase agreement in writing dated 12 July 1971 ('the agreement') expressed to be 'binding upon the heirs, assigns and personal representatives of the parties', the plaintiffs as the trustees of the will and trusts of the estate of the deceased Templeton had agreed to sell five plots of land known as holding nos 63(1) (later renumbered as lot 394), 64(1) (later renumbered as lot 39), 78(1), 78(2) and 80 to one Dato Low Yow Chuan, the managing director and alter ego of the first defendant, a development company. The second defendant is the contractor of the first defendant. However, the plaintiffs retained for themselves three other neighbouring plots, now known as lots 48, 55 and 56, the first two of which were the subject matter of this suit. By cl 11 of the agreement, it was provided as follows:

'This sale is sold subject to the right of way to owners of neighbouring holdings to and from their land on the existing road and also from holding 64(10) (now known as lot 48), Mukim 17, North East District, Penang.'

Unfortunately, there was nothing in the agreement defining 'the right of way', 'the neighbouring holdings' or the 'existing road' nor was any plan or sketch annexed thereto to define the nature and extent of the grant concerned.

Although the agreement was silent as to the question of the execution and registration of the forms prescribed under the National Land Code 1965 ('the Code') for the creation of an easement of way, the first plaintiff said that he came to know, sometime after the completion of the sale, as to the necessity for these requirements. So he asked for the same informally, though he was not able to recall to whom he spoke. However, the first defendant did not execute the forms prescribed under the Code for the creation of an easement of way and when, sometime in January 1980, the first plaintiff came to know that the first defendant was ready to commence earthworks on lot 39 (the major lot) pursuant to plans they had submitted, he wrote a letter dated 16 January 1980 (exh P2) to Dato Low Yow Chuan, its managing director, reminding him about cl 11 of the agreement and also that their development plans had not allowed for the right of way on the existing road, but this evoked no response. But at a meeting in February 1980 between the first